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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 United States of America, ) No. CV 09-1338-PHX-EHC (JRI)  
10 Plaintiff/Respondent, ) No. CR 08-0193-PHX-EHC  
11 vs. ) **ORDER**  
12 Jesus Felix Payan, )  
13 Defendant/Movant. )  
14 )  
15 )  
16 )

16 On June 22, 2009, Movant filed a Motion to Vacate, Set Aside or Correct Sentence  
17 under 28 U.S.C. § 2255.<sup>1</sup> The United States has filed a Response. The matter was referred  
18 to Magistrate Judge Jay R. Irwin who filed a Report and Recommendation on February 5,  
19 2010 recommending that the Motion be dismissed without prejudice for failure to prosecute  
20 (Dkt. 10 - CIV 09-1338).

21 The district court reviews de novo the portions of the Magistrate Judge's Report and  
22 Recommendation to which there is a filed objection. 28 U.S.C. § 636(b)(1)(C) ("a judge of  
23 the court shall make a de novo determination of those portions of the report, ..., to which  
24 objection is made."); see also United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir.  
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27 <sup>1</sup>A civil action is opened when a motion is filed under 28 U.S.C. § 2255 and all  
28 subsequent filings are docketed in the civil case. The § 2255 motion is also filed in the  
underlying criminal case.

1 2003). The district court is not required to review any issue that is not the subject of an  
2 objection. Schmidt v. Johnstone, 263 F. Supp. 2d 1219 (D. Ariz. 2003), citing Thomas v.  
3 Arn, 474 U.S. 140, 149 (1985).


4 Movant has not filed an objection to the Report and Recommendation. The docket  
5 sheet shows that the Report and Recommendation was mailed to Movant at his address of  
6 record on February 5, 2010 and that the mail was returned as undeliverable on February 22,  
7 2010 (Dkt. 11). The Report and Recommendation will be adopted as the Order of the Court.

8 Accordingly,

9 **IT IS ORDERED** that the Report and Recommendation of the Magistrate Judge (Dkt.  
10 10 - CIV 09-1338-PHX-EHC (JRI)) is adopted in full, including the denial of a Certificate  
11 of Appealability.

12 **IT IS FURTHER ORDERED** that the Motion to Vacate, Set Aside or Correct  
13 Sentence is dismissed without prejudice for failure to prosecute.

14 DATED this 12<sup>th</sup> day of March, 2010.

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18 Earl H. Carroll  
19 United States District Judge  
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